

**CITY OF ROCKLIN
MINUTES OF THE PLANNING COMMISSION MEETING**

**September 1, 2009
Rocklin Council Chambers
Rocklin Administration Building
3970 Rocklin Road
(www.rocklin.ca.us)**

1. Meeting Called to Order at 6:30 p.m.
2. Pledge of Allegiance was lead by Commissioner Menth.
3. Roll Call

Commissioner Shirhall, Chairman
Commissioner Sully, Vice Chairman – absent with cause
Commissioner Coleman – absent with cause
Commissioner McKenzie
Commissioner Menth

Others Present:

Terry Richardson, Assistant City Manager
Sherri Abbas, Development & Building Services Manager
Russell Hildebrand, City Attorney
Crystal Hodgson, Deputy City Attorney
Candace Johnson, Planning Commission Secretary

About 46 others

4. Minutes – The minutes of August 18, 2009 were approved as submitted.
5. Correspondence - None
6. Citizens Addressing the Commission on Non Agenda Items - None

Scheduled Items:

1. **AN APPEAL OF THE REVOCATION OF
HOME OCCUPATION PERMIT HO-2006-206
STARFISH SWIM SCHOOL
2550 FILAREE COURT, ROCKLIN, CA
KELLI MOWRY, OWNER**

The applicant, Ms. Kelli Mowry, has appealed the revocation of her Home Occupation Permit HO-2006-206 to the Rocklin Planning Commission pursuant to Rocklin Municipal Code Section 17.86.

The subject property is located 2550 Filaree Court, Rocklin, CA. APN: 045-240-008.

The property is zoned Planned Development-Residential.



The General Plan designation is Medium Density Residential (4-8 dwelling units per acre).

The applicant and property owner is Ms. Kelli Mowry.

Sherri Abbas presented the staff report.

The Commission had questions for staff regarding the following:

1. Section 17.68.040 of the Rocklin Municipal Code.
2. Language of the code with regards to "homeowner" and "occupant".

Applicant's Attorney, Jeff Aran, addressed the Commission. He asked for a continuance so that he could provide staff and Planning Commission proof of occupancy as it pertains to the City code. He introduced John Mowry, the homeowner and operator of the Starfish Swim School. Mr. Mowry presented a timeline of the revocation of the Home Occupation Permit. He stated that he felt that he and his wife had tried to accommodate the City and offered to move into the residence, if that was necessary. He stated that he felt the City's interpretation of occupancy was incorrect.

Mr. Aran addressed the Commission regarding the interpretation of the City's code for residency and occupancy.

Commissioner Shirhall asked the Commission whether they wanted to continue the item. The Commission agreed that they did not want to continue the item.

The Commission had no questions for the Applicant.

The hearing was opened to the public for their comments.

Clint Lorimer, Rocklin, CA, spoke with regard to the swim school. He stated that the school was a source of traffic for the residents and felt that the business was larger than what had been allowed for in the home business permit.

Kelly Mowry, Loomis, CA, addressed the Commission and stated that she had made efforts to be a good neighbor and accommodate the residents within the court (where the house is located) whenever she was aware of problems. She stated that she offered to move into the property, if that would satisfy the home occupation permit requirement. She stated that the home was not just used for business, but was a family home.

Irma Rodgers, Rocklin, CA, stated that if she had known there was a swim school located within the court she would not have bought her house. She stated that there are traffic, as well as parking issues.

Megan Woodry, spoke in support of the Mowrys and the swim school. She stated that she lived in the house with the Mowry's son, that she tried to be respectful of the neighbors, and that it is a family home. She asked the Commission to keep the swim school open.

Gigi Tubbs, spoke in favor of the swim school and disagreed with the resident's opinions regarding traffic issues and parking issues.

Jody Redacovitz, spoke in favor of the swim school and she did not feel that there were parking or traffic issues. She asked the Commission to consider Mr. Aran's definition of occupancy.

Jean Vestola stated that she owned two properties and would not like to have anyone tell her how long she could stay in one or the other. She stated that Ms. Mowry is very considerate with regard to parking and would like the swim school to remain open.

Robin Learn stated that her sons go to the swim school and she stated that she had not seen anything that was disrespectful toward the neighbors. She stated that she wanted the neighbors and the city to be supportive of businesses in the current economic climate. She stated that the home could go into foreclosure or be rented out and the residents could have other neighbors, with whom they might have more issues.

Kristina Beltzer spoke in support of the swim school. She did not feel that there was a parking issue and that the cars in the court were not due to the swim school students.

Erin Warner stated that she was Kelli Mowry's sister and that she did not feel that all of the cars on the court could be attributed to the swim school. She stated that she felt that the City should be more supportive of businesses.

Patty Lorimer, Rocklin, CA stated that her sister-in-law was the previous owner of the home where the swim school is located. She stated that she spoke to staff regarding her concerns with a non-resident conducting business at the home.

Karen Lyman, Rocklin, CA, stated that dictionary.com defines occupy as "to be a resident or tenant of, or dwell in", the Cambridge Dictionary defines it as "to move into and take control or possession of a place", Webster's says "to reside in as an owner or tenant" and that the Mowrys do not meet any of these definitions. She stated that there were traffic issues that had been resolved, but that are still issues. She stated that the swim school was a great program. However, she felt that the City made the correct decision in revoking the Home Occupation permit based on occupancy.

Andrew Samuels, Rocklin, CA, stated that his daughter goes to the swim school and that the Mowrys are very conscious of parking and traffic. He felt that a compromise should be negotiated between the City and the Mowrys in the interest of keeping businesses open in Rocklin.

Reyna Guillardily spoke in support for the swim school and urged the City to allow them to operate.

Janice Hurter, Granite Bay, CA, spoke in support of the swim school. She stated that she had never seen anyone park in front of the neighbor's houses who was bringing student to the swim school.

Kathryn Clanton stated that she is Kelli Mowry's niece and her children attend the swim school. She stated that she did not feel that parking was an issue. She stated that she witnessed the neighbors harass people who were bringing their children to the swim school. She stated that the neighbors were also unfriendly when she attended the home for family gatherings.

Kara Raymond, Rocklin, CA, stated that she is Kelli Mowry's daughter and she lives in the home that Ms. Mowry owns on Filaree Court. She stated that Ms. Mowry bought the house to open a swim school and never intended to move in. She also stated that the Mowrys had offered to move into the home so as not to have their business permit revoked.

Colleen Hamilton asked that the Commission to allow the school to stay open if the Mowrys take residence of the property.

Walter Chambers stated that he had seen the neighbors be rude to some of the patrons of the swim school and felt that the neighbors were the problem.

Suzy Malloy stated that she felt that the issue was what the definition of occupancy is and was that clear at the time the Home Occupation Permit was issued.

Paulette Clanton asked how many hours would it take to be in the home each day to qualify as being a resident and what difference does it make if she is at the home during the day or in the evening.

Norma Clanton stated that she was Kelli Mowry's mother. She asked why the permit was granted if the conditions of the permit were not met at the time the application was made.

Michelle Williams spoke in favor of the swim school. She stated that she felt that there were no parking problems and that the neighbors should be more positive toward the school.

The hearing was closed to the public.

Commissioner Shirhall asked Mr. Aran to return to the podium and asked if he had new input.

Mr. Aran stated that he did not have anything to add but was available for questions.

A recess was taken at 7:37 p.m.

The meeting reconvened at 7:44 p.m.

Commissioner McKenzie asked Mr. Aran if there is a tenant at the home.

Mr. Aran stated that the Mowry's daughter lives in the home.

Commissioner Shirhall stated that Rocklin Municipal Code pertaining to Home Businesses, chapter 17.68, item 17.68.010 refers to permitted chapter compliance, it states "subject to the provisions of this chapter" which would be Home Business, "a person within a residential zone may conduct a business within his residence". He stated that this was clear in his view and asked what Mr. Aran's position was.

Mr. Aran stated that he felt "residence" in that context means that they own the home.

Commissioner Shirhall stated that "residence" is defined as "the place, the house in which a person lives or resides."

Mr. Aran stated that the Mowrys live there, but that they do not stay overnight in the home.

Commission Deliberation/Discussion:

Commissioner McKenzie stated that he did not want to see a business leave the City, but his task was to decide on issues of land use and issues relating to the Rocklin Municipal Code. He stated that he felt that the applicant for a home business permit must be the owner and occupant of the home or a tenant with the permission of the owner. He stated that he felt that it had been well established that by the definition, that he would apply to the code, they do not occupy the home other than for business purposes and that is not fitting within the Home Occupation Permit and the Ordinance that governs it. He stated that the principal use should primarily be used for residential purposes. He felt that in this case, after listening to all of the information and input, that this business does not fit within the provisions of the Home Occupation Permit. He stated that he felt that this home is being used principally as a business, not a home. He stated that he would like to see the issue resolved amicably, but he did not feel that the definition had been met and he would vote to revoke the permit.

Commissioner Menth stated that the application says that the applicant must be an occupant of the home, not a resident of the home. He stated that he could not determine what occupancy means for purposes of denying the permit relative to the code, the application, and the associated material that was presented. He stated that he felt that the series of regulations for purposes of defining someone as an occupant to be unclear and ambiguous. He felt that a business owner would not be able to determine what the City wants for purposes of residence. He also felt

that it should not be up to staff to make an interpretation nor should it have to be the responsibility of the applicant. He felt that the code contains discretionary language and an appropriate use in this case would be not to revoke the permit. He stated that he finds that the owners do exercise control over the property, whether directly or through associated family members, and he stated that he would vote not to revoke the permit.

Commissioner Shirhall stated that he appreciated that this issue is emotional and he does not take the issue lightly. However he must look at the information in terms of what the Municipal Code states. He stated that in his opinion the intent of the code is to allow a resident the opportunity to have a home business. He stated that in this case, as he understood it, was that the Mowrys bought the home to run their swim school and that is not the intent of the permit. He stated that he believed that according to Municipal Code Section 17.68.010, "a person within a residential zone may conduct a business within his residence", that it is a residence first, and it is your primary residence, and a business second. He felt that in this case that the business is primary. He felt that the swim school was beneficial to the community, but what he had to decide was whether they qualify to have a Home Occupation Permit. He felt that based on the intent of the Rocklin Municipal Code, in his opinion, that they do not qualify for a Home Occupation permit. He stated that he would have to vote to revoke the permit. He stated that he hoped the Mowrys would move into the home, that they run a very good business at the location.

Commissioner Menth stated that the code was written seventeen years ago and that many things have changed since then not the least of which is the current economic state. He also stated that the materials provided in the packet have the definition of Occupant which says "the Rocklin Municipal Code does not define 'occupy'". He felt that if the Code did not define occupy that he did not see how the Commission could revoke a permit based upon occupancy.

Mr. Aran asked the Commission how long the Mowrys would have to close the business down if the vote is to revoke their permit.

Staff stated that typically the business is given seven days.

Commissioner Shirhall stated that the Applicant does have the option to appeal the decision to the City Council and asked the applicant if thirty days would be sufficient.

Mr. Aran stated that thirty days would be an acceptable amount of time to prepare an appeal if necessary or bring in a new application and resolve the issues.

Commissioner McKenzie agreed to thirty days.

Commissioner McKenzie: "Based upon the de novo hearing of Home Occupation Permit HO-2006-206, the testimony received this evening, letters and other information received, pursuant to Rocklin Municipal Code 17.68.050 requiring the applicant for a home business permit be an owner and occupant of the home, and by the strict interpretation and common use of the term when applied meaning the business owner must occupy the home, and in this case revocation is reasonably related to the public welfare, I would move to revoke Home Occupation permit HO-2006-206

Commissioner Menth: "Point of order Mr. Chairman. Have we just made a determination of what the definition of Occupancy is in a motion versus the appropriate hearing procedure that we go through and notice, and hearing, and public comment?"

Commissioner Shirhall: "I don't believe so. I believe he simply is stating the subject line 050. I would ask that you add subject line 010 of the same Home Business section, Chapter 17."

Commissioner McKenzie: "I will accommodate that request in the motion. I would also add to that motion that the applicant be provided with thirty days to shut down and/or apply and have approved a new Home Occupation Permit."

On a motion by Commissioner McKenzie and seconded by Commissioner Shirhall, revocation of Home Occupation Permit HO-2006-206 was approved by the following vote:

Roll Call Vote:

AYES: Commissioner McKenzie,
NOES: Commissioner Menth
ABSENT: Commissioners Coleman and Sully
ABSTAIN: None

Motion carried: 2/1

A recess was called at 8:05 p.m.
The meeting reconvened at

10. Reports and Discussion Items from Planning Commissioners

- a. Rental trucks at Ace Hardware.
- b. Weeds growing on the parcel between Ace Hardware and Rocklin High School.
- c. Jiffy Lube – outdoor maintenance.

11. Reports from City Staff

- a. Attendance at the Draft EIR hearing on September 3, 2009.
- b. Attendance at the 9/15/09 Planning Commission meeting.

12. Adjournment

There being no further business brought before the Commission, the meeting was adjourned at 8:12 p.m.

Respectfully submitted,



Candace Johnson
Planning Commission Secretary